Supreme Court, U.S.
FILED
DEC 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-814

In the Supreme Court of the United States

OCTOBER TERM, 1989

CENTRAL GULF LINES, INC.
Petitioner,

VERSUS

WILBERT WILLIAMS, Personal Representative of the Estate of BALLARD WILLIAMS, Deceased
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Certain portions of appellant's recital of the facts are contested by respondent:

I. Central Gulf controlled the S/S BAY

The Fifth Circuit correctly found and the fact is that under the charter agreement Central Gulf Lines retained "complete and exclusive possession and control of the vessel and its navigation" (Charter Article 31, Lodgings, Exhibit 2). The Charter also says that the Master of the S/S BAY "shall not be under the Charterer's orders as regards navigation, care and custody of the Vessel and care of the cargo", and that Central Gulf retained complete control over the "masters, officers and crew" of the vessel (Charter Article 22 (a), Lodgings, Exhibit 2). The charter expressly provides that it is not a demise charter (Charter Article 31, Lodgings Exhibit 2).

Central Gulf also maintained financial responsibility for the voyage, since under the charter it was responsible for hiring and paying the "master, officers and crew," (Charter Article 22 (a), Article 10, Lodgings Exhibit 2) and had responsibility to maintain the vessel "in a thoroughly efficient state in hull, machinery, equipment, personnel and other particulars relative to seaworthiness of the vessel." Central Gulf, the charter says, "shall pay for all expenses incurred in the navigation and management of the vessel" (Article 21 (a), Lodgings, Exhibit 2).

Despite clear language to the contrary in the Charter Party itself, Central Gulf inexplicably continues to argue that it did not maintain control over the vessel, its crew and navigation.

II. Neither AIDS nor war is at issue in this application

Though the cause of Williams' death and the type of cargo carried by the S/S BAY are not germane to the issue before the Court, respondent points out:

Evidence that Ballard Williams was infected with the AIDS virus is contested. The only evidence of such is the conclusion of a physician made January 16, 1987, almost three years after Williams' death, based on a test allegedly performed then on Williams' blood. Neither chain of custody of Williams' blood sample nor adequacy of preservation or testing method has been established. The United States Air Force physician's conclusion was that results are "consistent with" diagnosis of AIDS (Lodgings, Exhibit 1). Applicant's conclusion that "his cause of death probably was AIDS" is highly suspect for a number of reasons, including the fact that people do not "die of" AIDS at all. It is commonly known that the AIDS virus destroys the human immune system eventually permitting various infections to invade the body, some of which can be fatal. There is no evidence whatsoever that Williams contracted AIDS "while aboard" the vessel, as applicant claims.

Applicant for the first time in this litigation seeks to characterize the S/S BAY as a Navy "munitions" ship, when in fact the record is short on evidence to support that characterization. Central Gulf's original brief in the Fifth Circuit stated that the S/S BAY carried "dry cargo and supplies, including munitions." The affidavit of Mr. Hannan (Applicant's Appendix A) does not mention it.

SUMMARY OF ARGUMENT

The decision of the Fifth Circuit should not be reviewed because:

(1) The decision was one of first instance in the federal appellate courts, and is not in conflict with any federal appellate decision, statute, or state supreme court case.

(2) It merely fashioned a judicial test designed to solve a problem posed by the facts of the case at bar.

(3) It is a sound decision which provides a clear guide for future resolution of similar cases.

ARGUMENT

The issue in *Williams v. Central Gulf Lines*, 874 F. 2d 1058 (5th Cir. 1989) is whether the exclusivity provision of the Suits in Admiralty Act should apply to a privately owned vessel merely time-chartered to the United States, thus excluding tort claims against a private vessel owner and shifting responsibility for those claims to the United States.

The decision of the Fifth Circuit is one of first instance in the federal appellate courts on this issue. There are no conflicting federal appellate decisions, federal statutes or state supreme court decisions. The decision does resolve an apparent jurisprudential conflict in the Federal District Courts. See *Stubblefield v. Vickers Towing Company*, 674 F. Supp. 566 (N.D. Miss. 1987), which held that a privately owned vessel time-chartered to the United States was "operated for the United States" within the meaning of the Suits in Admiralty Act, and *Habrat v. United States*, 310 F. Supp. 618 (W.D. Pa. 1970), which reached the opposite conclusion. In *Williams* the Fifth Circuit fashioned a test which solves the problem of how to reconcile the language of the Suits in Admiralty Act ("SAA", 46 U.S.C. Section 741 et seq.,) and the inequity of

its strict application to the privately owned vessel merely time-chartered to the United States.

The *Williams* case posed this problem: how can the courts strictly apply the language of the SAA to hold that a privately owned vessel merely time-chartered to the United States is therefore a vessel "operated for" the United States within the meaning of the statute, when to do so would mean that (a) a private employer like Central Gulf would be exempt from claims for maritime injury to its own employees aboard its own vessel, (b) liability for such claims would be shifted to the United States, (c) a seaman who suffers injury in those circumstances would lose his claims unless filed within the two year statute of limitations for claims against the United States, and (d) mass confusion would ensue in all cases of injury aboard private vessels time-chartered to the United States, because the legal interpretation of each charter agreement would be necessary to determine whether the proper defendant is the private employer/vessel owner or the United States of America.

Central Gulf Lines provides detailed analysis of the language of the charter agreement and argues that it shows delegation of sufficient "control" of the vessel to the United States in order to shift legal responsibility for injury claims to the United States. But in seeking reversal of the Fifth Circuit decision, Central Gulf wants to place that burden of analysis on the injured seaman, who when injured while working for a private employer aboard its own vessel which is time-chartered to the United States at the time of his injury, must then sue the United States within two years of his injury (see 46 USC Section 745) and provoke a judicial analysis of the time charter agreement. If insufficient delegation of "control" is found, then the United States is dismissed and the seaman knows the private

maritime employer is the proper defendant.

This absurd and unfair situation has been resolved by the Fifth Circuit in *Williams* in a way which does justice to the intent and language of the SAA and allows considered application of legal principles to each fact situation presented. The Fifth Circuit has fashioned a two-pronged test for Courts to apply in resolving this somewhat thorny issue. The test is sound in principle, does justice in its application and fosters one of the primary purposes of the SAA as amended, to permit a seaman to ascertain with reasonable certainty the identity of the proper defendant for his claims. S. Rep. No. 1782, 81st Cong., 2d Sess. 1950, U.S. Code Cong. Serv. 4210.

A PRIVATE VESSEL IS NOT A PUBLIC VESSEL

Central Gulf argues that the S/S BAY was a "public vessel" within the meaning of the Public Vessels Act, 46 U.S.C. Section 781. There is no authority for the proposition that a privately owned vessel merely time-chartered to the United States is therefore a public vessel, and even the sole direct jurisprudential authority for Central Gulf's original motion, *Stubblefield v. Vickers Towing Company, supra*, acknowledged that such a vessel is not a public vessel. 674 F. Supp. at 568. See *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 96 S. Ct. 1319, 47 L. Ed. 2d 653 (1976).

For this reason, the issue is inappropriately raised herein.

CONCLUSION

The Fifth Circuit has performed an important judicial function by fashioning a clear and reasoned test to

be applied in order to determine the identity of the proper defendant in claims for injury to seaman aboard privately owned vessels which happen to be time-chartered to the United States at the time of the injury. To upset that decision would cast immediate uncertainty on the rights and obligations of seamen, private maritime employers and the United States.

For these reasons the petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been mailed by United States Mail, postage prepaid and properly addressed, to all counsel of record and to the United States Attorney's Office, this 16th day of December, 1989.

CHALMETTE, LOUISIANA.

_____

A. SCOTT TILLERY